IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1277 OF 2005

Yunus Yusuf Shaikh. ... Petitioner
Versus.
The Forest Officer & anr. ... Respondents.

Shri H.V.Kode for the Petitioner.

Shri A.S.Gadkari A.P.P.for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 10th June, 2005.

P.C.:

1. The Petitioner claims to be the owner of an autorickshaw which was parked in front of his residential premises. The said autorickshaw was confiscated and attached by the Forest Officer on 15th May 2001 and an application made by the Petitioner before the learned Metropolitan Magistrate for return of the autorickshaw was rejected. A Revision Application filed by the Petitioner before the Sessions Court was also rejected. The Petitioner approached this Court by filing Criminal Writ Petition No.2261 of 2004. This Court disposed of the Petition by noting that the autorickshaw has been confiscated under the special provisions of the Forest Act and the said order is not challenged and therefore, this Court proceeded to observe as under:

"Petitioner prays for liberty to take out

appropriate application after the petitioner succeeds in getting the confiscation order set aside. The Petition is disposed of with liberty to the petitioner as prayed for."

Therefore, this petition has been filed in which prayer (b) is for challenging the order passed by the Forest Officer, Borivali.

2. The learned Counsel for the Petitioner submitted that the action of the Forest Officer of attaching the autorickshaw is patently illegal and bad-in-law. He submitted that a sum of Rs.5000/- has been taken by way of penalty from the Petitioner and still the autorickshaw is not released.

3. The learned A.P.P. appearing for the Respondents has submitted that there was a power vesting in the Forest Officer to take action under section 61-A of the Indian Forest Act, 1927 (as amended by Maharashtra Act). He invited my attention to the order passed by the Division Bench of this Court in Writ Petition No.305 of 1995 prohibiting entry of autorickshaws in the forest area. He pointed out that a sum of Rs.5000/- has been taken by the authorities from the Petitioner for the purpose of rehabilitation of the Petitioner as he was likely to be affected by the aforesaid order passed by this Court.

4. I have considered the rival submissions. Nothing is placed on record to show that the power under section 61-A of the said Act of 1927 has been exercised by the Forest Officer. On a plain reading of the said provision, the power can be exercised by the Forest Officer only when a forest offence is believed to have been committed in respect of timber, sandal wood, fire wood or any other notified forest produce which are the properties of the State Government. It is not the case of the Respondents that any such offence has been committed. Though the order of the Division Bench restrains entry of autorickshaws in forest area, the concerned Forest Officer could have prohibited entry of the autorickshaw, but the autorickshaw could not have been taken over and attached.

5. The autorickshaw is now in possession of the Forest Department for last more than four years. As there is no material placed on record to show that the autorickshaw has been confiscated and attached under any specific provisions of law, the same will have to be released to the Petitioner subject to the Petitioner filing an undertaking in this Court for producing the same before the concerned Court of the Metropolitan Magistrate as when ordered. As regards payment of Rs.5000/- by the Petitioner, I have not made any adjudication in that behalf and if the Petitioner

desires to have refund of the said amount, then the Petitioner may take appropriate action in that behalf.

6. Hence the following order is passed:

(i) The Respondent No.1 will return the autorickshaw bearing registration No.MH-02-Z05902 to the Petitioner subject to the Petitioner filing an undertaking in this Court to produce the said autorickshaw as and when directed by the concerned Court of the Metropolitan Magistrate.

(ii) Liberty to the Petitioner to take out appropriate proceedings for refund of the sum of Rs.5000/- paid by the Petitioner on 20th March 2000.

(iii) The Petition is disposed of in the above terms.

(iv) Parties to act on authenticated copy of this order.

Judge.